

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC., WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.,  
COAL RIVER MOUNTAIN WATCH,  
INC., and SIERRA CLUB,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 3:10-cv-0833**

**COAL-MAC, INC., and MINGO LOGAN  
COAL COMPANY,**

**Defendants.**

**PLAINTIFFS' SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR  
DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES**

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs move for summary judgment as to liability on their Third through Eighth Claims for Relief in their Complaint for Declaratory and Injunctive Relief and for Civil Penalties. The specific issues posed by this motion are:

1. Whether, as alleged in Plaintiffs' Third Claim for Relief, Defendant Coal-Mac, Inc. ("Coal-Mac"), is liable for 151 days of violation of the Federal Water Pollution Control Act (hereinafter, the "Clean Water Act") and the terms and conditions of West Virginia/National Pollution Discharge Elimination System ("WV/NPDES") Permit Number WV0068764, as a result of the 14 instances shown in Exhibit 2 to this motion in which Defendant Coal-Mac's discharges exceeded the selenium effluent limitations in that permit.
2. Whether, as alleged in Plaintiffs' Fourth Claim for Relief, Defendant Coal-Mac is liable for its violations of the Clean Water Act as a result of its failure to timely commence and complete the construction of selenium treatment facilities pursuant to West Virginia Department of Environmental Protection ("WVDEP") Amended Order

No. 5 and its command to commence and complete such construction on dates certain.

3. Whether, as alleged in Plaintiffs' Fifth Claim for Relief, Defendant Coal-Mac is liable for 151 days of violation of SMCRA, WVSCMRA, the implementing regulations under those statutes, and the terms and conditions of terms and conditions of West Virginia Surface Mining Permits S006983, S007280, S501494, U503595, O51600, S503695, and S505289, as a result of the 14 instances, shown in Exhibit 2 to this motion, in which Coal-Mac's discharges exceeded the selenium effluent limitations in WV/NPDES Permit WV0068764.
4. Whether, as alleged in Plaintiffs' Sixth Claim for Relief, Defendant Mingo Logan Coal Company ("Mingo Logan"), is liable for 183 days of violation of the Clean Water Act and the terms and conditions of WV/NPDES Permit Number WV1004956, as a result of the 15 instances, shown in Exhibit 5 to this motion, in which Defendant Mingo Logan's discharges exceeded the selenium effluent limitations in that permit.
5. Whether, as alleged in Plaintiffs' Seventh Claim for Relief, Defendant Mingo Logan is liable for its violations of the Clean Water Act as a result of its failure, demonstrated in Exhibit 7 to this motion, to timely commence and complete the construction of selenium treatment facilities pursuant to WVDEP Order No. 45 and its command to commence and complete such construction on dates certain.
6. Whether, as alleged in Plaintiffs' Eighth Claim for Relief, Defendant Mingo Logan is liable for 183 days of violation of SMCRA, WVSCMRA, the implementing regulations under those statutes, and the terms and conditions of terms and conditions of West Virginia Surface Mining Permits S508187 and U508886, as a result of the 15 instances, shown in Exhibit 5 to this motion, in which Coal-Mac's discharges exceeded the selenium effluent limitations in WV/NPDES Permit WV1004956.

A party is entitled to summary judgment when it shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). To survive a motion for summary judgment, the nonmoving party must offer some "concrete evidence from which a reasonable juror could return a verdict in his [or her] favor[.]" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The nonmoving party must satisfy this burden of proof by offering more than a mere "scintilla of evidence" in support of his or her position. Id. at 252.

As explained in Plaintiffs' memorandum in support of this motion, there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law on Plaintiffs' Third through Eighth Claims for Relief. Plaintiffs respectfully request that the Court issue an order granting their motion for summary judgment, declaring Defendants Coal-Mac and Mingo Logan to be in violation of the Clean Water Act and SMCRA, ordering Defendants to come into compliance with its selenium effluent limitations and with the WVDEP orders, ordering the imposition of civil penalties and scheduling a hearing to determine the scope and terms of injunctive relief and the amount of civil penalties.

Respectfully submitted,

/s/ Derek O. Teaney

---

DEREK O. TEANEY (WVSB # 10223)  
JOSEPH M. LOVETT (WVSB # 6926)  
Appalachian Ctr. for the Econ. & the Env't.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 793-9007  
Fax: (304) 645-9008  
E-mail: dteaney@appalachian-center.org

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC., WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.,  
COAL RIVER MOUNTAIN WATCH,  
INC., and SIERRA CLUB,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 3:10cv0833**

**COAL-MAC, INC., and MINGO LOGAN  
COAL COMPANY,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, Derek O. Teaney, do hereby certify that, on September 24, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Robert G. McLusky  
Jackson Kelly PLLC  
500 Lee Street East  
Suite 1600  
PO Box 553  
Charleston, WV 25322  
*Counsel for Defendant*

**/s/ Derek O. Teaney**  
DEREK O. TEANEY (WVSB # 10223)  
Appalachian Ctr. for the Econ. & the Env't.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 793-9007  
Fax: (304) 645-9008  
E-mail: dteaney@appalachian-center.org

*Counsel for Plaintiffs*